

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1374 of 2008(O&M)

Reserved on:17.12.2014

Date of decision:14.01.2015

Ram Kishan Dass (deceased) through LRsPetitioner

Versus

Parveen Gulati & othersRespondents

CR No.5625 of 2008(O&M)

Parveen GulatiPetitioner

Versus

Bal Kishan Dhiman & othersRespondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Bhavnik Mehta, Advocate, for the tenant
(in CR No.1374 of 2008).

Mr.Rajinder Goyal, Advocate
and Mr.Amit Kashyap, Advocate, for the tenant
(in CR No.5625 of 2008).

Mr.Sudeep Mahajan, Advocate, for the landlord.

G.S.Sandhawalia J.

The present judgment shall dispose of CR Nos.1374 & 5625 of 2008, involving common questions of law and facts.

In the former case, Ram Kishan Dass, who is a tenant of shop No.515/7, is in revision before this Court, aggrieved against the order of eviction passed by the Appellate Authority, Kaithal dated 30.01.2008, whereby ejectment has been ordered on the ground of personal necessity. In CR No.5625 of 2008, the landlord-Parveen Gulati is in revision, aggrieved against the rejection order of the claim for ejectment by the Rent

Controller vide order dated 24.03.2008 and upheld in appeal on 14.06.2008, for shop No.516/7. It is pertinent to mention that vide order dated 10.03.2010, earlier this court had dismissed the petition filed by the tenant/Ram Kishan Dass and allowed the landlord's petition for ejectment on the ground of the tenanted premises for personal *bona fide* necessity in Bal Kishan's case. Both the tenants preferred SLPs Nos.12014 & 12828 of 2010, which were converted into Civil Appeal Nos.2501 & 2502 of 2012, which were allowed on 21.02.2012 and the matter was remanded for fresh decision on account of the fact that while deciding the case, this Court had made a wrong assumption that the plea of *bona fide* requirement had been raised by the landlord which had been upheld by the Rent Controller. Accordingly, noticing that this Court's order was based on a wrong premise, the same was set aside to pass appropriate orders, after hearing parties. In such circumstances, this Court is seized of the said revisions again.

Facts of CR No.1374 of 2008

The litigation was initiated initially by the tenant/Ram Kishan Dass by filing a petition under Section 12 of the Haryana Urban Control of Rent & Eviction Act, 1973 (for short, the 'Rent Act') on 11.02.2003 stating that he was a tenant in shop No.515/7 and on the northern side, the other shop of Bal Kishan was situated. The rent was of Rs.145/- inclusive of house tax and there was an open place on the roof of the shop in question which was used by the respondent as courtyard and for sitting. On the northern side of which, there was a drain flowing from west to east at the northern end of the roof of the shop in question, which was in damaged condition and water was leaking in the lintel of the shop in question. The remaining part of the roof in question had also been damaged by the

landlord due to which there was water leakage in the drain and required necessary repairs to avoid damages and it was the bounden duty of the landlord to repair the same and keep it in fit condition. Request was made to repair the same but they failed to do so and since the rainy season was to set in, the rain water would seep in and therefore, permission was sought to carry out repairs by the tenant and deduct the costs from the rent.

In reply, the averments in the said application were denied and it was pleaded that the tenant was also liable to pay house tax and the rent note was wrong and denied. It was denied that the drain was in damaged condition and that water leaked in the lintel. The tenant was asked to be put strict proof of the facts and the roof of the shop in question was used by landlord and his families and no person could be expected to damage its own property, which was under use and the tenant was not paying rent regularly.

In the counter-claim filed along with the reply, it was averred that the premises were required for the own use and occupation as respondent No.2 was unemployed and had no work to do. He intended to start a business of readymade garments by including shop Nos.514, 515, 517 and 514/7 which was lying vacant. An averment was also made that shop No.516/7 was in possession of another tenant, namely, Bal Kishan and an application for ejectment was also filed against the said Bal Kishan. It was further averred that the answering respondents were not occupying any other shop.

In the replication-cum-reply to the counter claim, it was admitted that the first floor was being used by landlord but he was a mischievous type of person who wanted to get the tenanted premises vacated by hook or

by crook and was in the habit of harassing his tenants. He had gone to the extent of closing the door of ingress and outgress of one Lukshmi Narain, which was got opened by the order of the Civil Court. He had been purposely damaging the roof of the tenanted premises as he wanted the same vacated illegally. In the reply to the counter-claim, it was denied that the tenant was not liable to pay house tax in addition to the rent and he was liable to refund the house tax @ 18% per annum or it could be adjusted in the future rent. The landlord was not unemployed and he was doing business of contractorship and was also doing business in the name of Kit Computer Centre on the first floor of the premises. He was in possession of the shop No.514/7, towards southern side of the premises which was lying vacant but he was not doing business in the said shop. The stairs of the first floor where the computer centre was running opened on the main road and the respondent did not require the shops for his personal use. He did not intend to do any business of readymade garments and the averments of personal need was a mere wish and a counter-blast to the application for permission to repair. The said claim had only been put up when the application had been filed which showed the hollowness of his claims. The factum of pendency of the ejectment petitioner against Bal Kishan against other tenant was denied.

The Rent Controller framed the following issues:

1. Whether the petitioner being tenant in the shop in question is entitled to get permission to carry out the repairs as mentioned in the petition, as prayed for in the petition?
OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has no locus standi to file the present petition? OPR

4. Whether the petition has not been verified as per law?

OPR

5. Whether the petition of the petitioner is liable to be rejected on the grounds as mentioned in the counter claim?

OPR

6. Relief.

The tenant examined 4 witnesses including himself whereas the landlord examined one draftsman, Gurvinder Kumar as RW1 and appeared himself as RW2. The issue of requiring permission to carry out the repairs was decided against the tenant on the ground that vide the earlier order dated 11.12.2003, directions had been issued to carry out repairs. Issue Nos.2 & 4, pertaining to the maintainability of the petition and not being verified as per law, were disposed of as not pressed, against the landlords, whereas issue No.3 was held to be in favour of the petitioner that he has *locus standi* to file the petition. The ground of ejectment was rejected both on the ground of arrears of rent and the *bona fide* necessity, by noticing that the rent had been tendered along with costs on 18.08.2003. The tenant was in occupation since 1973 and shop No.514 was lying vacant since the last 7-8 years and the landlord could have used the same and he could not have kept on waiting for the vacation of the shop. It was noticed that the computer centre was being run by one girl on the roof of the shop and neither that had been used for running the business and therefore, the *bona fide* need of the respondent was a mere wish and further, that it was a counter-blast to the main petition.

Both parties being dissatisfied, filed separate appeals before the Appellate Authority and the Court keeping in mind the fact that it was a small shop having an area of 7'x10' and the landlord earlier having worked as a contractor and it having not yielded much result, it was open for him to

open a shop of readymade garments. The location of the chabutra on the first floor was held not to be a proper place, as such, for running the business, keeping in view the fact that the landlord was the best judge of his requirements and the tenant could not dictate where the landlord is to run his business. The appeal was, accordingly, allowed and ejectment was ordered. The cross-appeal of the tenant was also allowed by noting that as per the rent note, the payment of house tax and property tax was the responsibility of the landlord. The amount of Rs.724/-, which was the house tax along with interest was ordered to be refunded @ 7.5% per annum from 18.08.2003. Resultantly, the present revision petition has been filed by the tenant-petitioner, aggrieved against the ejectment order dated 31.01.2008.

Facts of CR No.5625 of 2008

The respondent No.1-tenant, Bal Kishan Dhiman also filed a petition under Section 12 of the Rent Act, pleading that he was in possession of shop No.516, which was having shop No.515/7 in possession of one Ram Kishan as tenant, situated on the southern side. Similar allegations were also made regarding the rent and the open space on the roof of the shop which was used by the landlords for sitting on the courtyard and on the northern side, there was a room of the landlords. The presence of the drain in question which was damaging the roof of the shop was detailed in the application. The landlord-present petitioner, in his reply, denied the factum of any damage in view of the drain and in his counter-claim, again took the plea that he wanted the shop in question for starting a business of readymade garments by including shop No.514, which was in his possession and lying vacant along with shop Nos.515 &

517. It was stated that shop No.515 was in possession of the other tenant, namely, Ram Kishan Dass against whom also, application for ejectment has been filed and the respondent was not having any other shop.

In the reply filed to the counter-claim by the tenant, it was mentioned that shop No.514/7 was in possession of one Bahadur Chand, vegetable merchant 2-3 years earlier, who has vacated and the same was in possession of the landlord. The site of the shops No.514/7 to 518/7 was in the shape of chabutra and was the plinth of the main building. The same was demolished and the shops were constructed by the owner. On the first floor of shops No.517 & 518, there was a shop of size measuring 12'x15' whereas the roof of the shops No.514 to 516 was lying vacant. The father of the landlord, namely, Ram Prakash Gulati was running a computer centre and was running an office of Sales Tax Consultancy as he was a retired Sales Tax Officer. The said first floor was vacant and in possession of the landlord for the last 4-5 years, since the father had died and therefore, the ground of ejectment was a counter-blast to the petition file for repairs. The factum of filing ejectment application against Ram Kishan Dass was denied.

The Rent Controller framed the following issues:

1. Whether the petitioner is entitled to carry out the necessary repairs in the tenanted premises as alleged?
OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has no locus standi and cause of action to file the present petition?
4. Relief.

In support of the same the tenant examined as many as 3 witnesses whereas the landlord examined himself and one Gurinder

Malhotra, Architect.

The relief of carrying out necessary repairs on issue No.1 was denied to the tenant since the drain had already been repaired as there was an admission by the tenant that the roof and drain had been repaired. The issue of arrears of rent was declined in view of the tendering of rent till 10.10.2003, as demanded and therefore, the ground seized to exist. On the ground of personally necessity, it was held that since shop No.514/7 was lying vacant for the last 7-8 years and it was unbelievable that a person who was unemployed since 2001-02 and had not filed any ejectment petition prior to the filing of the present petition on 21.02.2003 and the counter-claim of 07.08.2003 showed that it was a mere wish of the landlord to get the shop vacated and could not be termed as a necessity. The factum of the eviction having been ordered in the adjoining shop was also noticed. However, a different view was taken that there was no *bona fide* requirement. The issues on the maintainability and the *locus standi* having not been pressed, were decided against the landlord. Resultantly, the counter-claim as well as the petition were dismissed vide order dated 24.03.2008.

The Appellate Authority, while rejecting the appeal on 14.06.2008, held that the *bona fide* requirement needed to be proved and it had not been pleaded and proved that the landlord did not own or possess any other property in the same urban area which could be used for the said purpose and that he had not vacated any such property after the commencement of the Rent Act. It was held that since it had been asserted by the tenant that on the first floor of shop Nos.517 and 518, there was a shop of size 12'x15' and the said fact had not been countered and there was

no rejoinder. There was a further admission that shop No.514 was also lying vacant and it was held that proper pleadings were not there and the landlord had not approached the Court with clean hands in order to prove his *bona fide* requirement. It having not been proved by leading any cogent evidence that he had not vacated any other premises after the commencement of the Rent Act. Reliance was further placed upon the amendment application which had been filed to plead the *bona fide* requirement in consonance with the statutory requirement on Section 13 of the Rent Act, which had been rejected a day earlier, i.e., on 13.06.2008. Vide the said order, the amendment regarding the specific requirement of Section 13 which had been filed was rejected on the ground that he should have approached the Rent Controller first where the matter had been kept pending for long. The application had been filed only when arguments had been heard and had been, accordingly, dismissed. Resultantly, the present revision petition has been filed.

Arguments raised by counsels:

Counsels for the tenants, one who is arrayed as petitioner and the other as a respondent, namely, Mr.Rajinder Goyal and Mr.Bhavnik Mehta, have argued that the mandate of Section 13(3)(a)(i)(b)(c) provides that if the landlord applies for an order directing the tenant to put the landlord in possession in case of residential building, he has to state the necessary ingredients that he is not occupying, in the urban area concerned, any building or that he has not vacated any such building without sufficient cause, after the commencement of the Act. It was further argued by Mr.Goyal, counsel for Bal Kishan, tenant in shop No.516 that even an amendment application had been filed before the Appellate Authority, thus

admitting the factum of the mandatory provisions not being averred and the application for amendment was dismissed by the Appellate Authority on 13.06.2008, a day before the appeal was dismissed. The said order was not challenged and even if the said order was not justified, the matter was only to be remanded back to the Rent Controller for allowing the amendment and for a fresh decision.

He has placed reliance upon the judgment of the Full Bench of this Court in *Banke Ram Vs. Smt.Sarasvati Devi 1977 AIR (Punjab) 158* and *Hans Raj & others Vs. Balraj Singh 1978 Current Law Journal (Civil) 161* to submit that once the averments were not in consonance with the mandatory requirements, the petition was liable to be dismissed. Reliance has also been placed upon the judgment of the Apex Court in *Ajit Singh & another Vs. Jit Ram & another 2008 (2) RCR (Rent) 328* wherein it has been held that if the requirement is for the son, then specific averment is to be made that the son is also not occupying, in the urban area concerned, any other building or he has not vacated the building without sufficient cause, after the commencement of the Rent Act. Reliance has also been placed upon the judgment of this Court in *Shankar Lal Vs. Madan Lal & others 2011 (1) RCR (Rent) 139* and *Manmohan Lal Vs. Shanti Parkash Jain 2014 (2) RCR (Rent) 222.*

It was, accordingly, argued that the factum of vacant shop No.514/7 was mentioned and it was not specifically mentioned that he has no other shop in the urban area of Kaithal. Reference has also been made to the affidavit filed in evidence dated 02.06.2000, to submit that the landlord had deposed that he had not occupied any other shop, other than 514/7 in the area of Gandhi Park and the landlord had specifically restricted his

averment and concealed material facts. The ownership of shop Nos.517 & 518 was also a matter of fact and no eviction proceedings had been filed against the said tenants. The landlord had a room on the first floor on which a computer centre was running and once he had sufficient accommodation in the form of one empty shop on the ground floor and another room on top, there was no *bona fide* necessity and requirement of shop Nos.515 & 516. It was submitted that the two rooms were vacant since reasonably long time and if he wanted to start business, he could do so and therefore, it was a mere desire. Ejectment could not be ordered on that account since earlier, no requirement had been shown and once a petition under Section 12 had been filed, as a counter blast, the plea of *bona fide* necessity had been taken. Accordingly, it is submitted that in view of the concurrent findings recorded in the case of Bal Kishan, this Court should refrain itself from interfering in exercising its revisional powers.

Counsel for the landlord, Mr.Sudeep Mahahan has been at pains to take this Court through the pleadings which have been made by the landlord to submit that what was required was the occupation under the statute and not the ownership, as has been wrongly held by the Appellate Authority in the case of the tenant-Bal Kishan. Reference has been made to the counter-claim to submit that possession of shop No.514/7 had been mentioned and that he was not in possession of any other shop. The pleadings in the petition under Section 12 itself showed that there was a room in the first floor and it was not any shop and neither there were any averment in the reply that the ingredients of Section 13 had not been fulfilled and no issues had been framed on that point. Therefore, the Rent Controller had been not justified in rejecting the ejectment on the ground of

bona fide necessity and requirement only on account of the fact that he was having possession of one shop and one room on the top and had not started his business.

It was submitted that sufficient evidence had come to the effect regarding the mandatory averments and therefore, if the tenant had failed to take any defence of the mandatory ingredients being absent and no issues having been framed, the said aspect could not be raised. Reliance was placed upon **Gurbaj Singh Vs. Parshotam Singh & others 2011 (2) RCR (Rent) 349** and **Sat Parkash Chaudhary Vs. Kewal Krishan Malhotra 2011 (1) RCR (Rent) 340** to submit that the flaw was fatal as the tenant had failed to object and he could not raise the issue subsequently, especially when there was sufficient material to show that parties were well aware of the case and the petition could not be thrown out merely because the landlord had failed to plead the necessary ingredients. Reliance has been placed upon the judgment of the Apex Court in **Sarla Ahuja Vs. United India Assurance Company Ltd. 1998 (2) RCR 533** to submit that it was not for the tenant to dictate the terms to the landlord as to how he could adjust himself and the landlord had the freedom how to best utilise his property for the *bona fide* requirement.

It was further argued that even though alternative accommodation was available, the *bona fide* requirement could not be doubted. Reliance was placed upon the judgment of this Court in **Krishan Lal Sood Vs. Sharda Sharma 2008 (1) RCR (Rent) 2** and **Yash Pal Juneja Vs. Satish Kumar Sandooja 2009 (1) RCR (Rent) 420**. It was submitted that rent had not been paid thereafter also and reliance was placed upon the judgment of the Apex Court in **Carona Ltd. Vs. Parvathy Swaminathan & Sons (2007)**

8 SCC 559 to submit that litigation had been pending since last decade and the matter had gone upto the Supreme Court and rent had, admittedly, not been paid after 31.12.2010 and the conduct of the tenant showed that he was not entitled for the discretionary and equitable relief and accordingly, prayed for the dismissal of the revision petition filed by the tenant, Ram Kishan whereas he prayed for reversal of the finding and orders passed by the authorities in Bal Kishan's case on the ground that there was sufficient scope under Section 15(6) since there was illegality in the proceedings conducted by the authorities and the approach was against the basic principles.

Conclusion:

After hearing counsel for the parties, this Court is of the opinion that there is merit in the arguments raised by counsel for the landlord. A perusal of the pleadings itself, in Bal Kishan Dhiman's case, as has been discussed in detail, goes on to show that though initially, the issue arose out of proceedings under Section 12 but the parties were well aware as to what was the accommodation available to the landlord. It has already been mentioned in detail that the shops in question are part and parcel of one main chabutra which was demolished and the total number of shops in question in the building concerned are five. One shop numbering 514/7 was in possession of the landlord already. The other two shops owned by the tenants which are adjoining are 515 & 516 whereas another two shops were occupied by other tenants numbering 517 & 518. The said shops are, thus, part of the larger building and the residential house of the landlord is behind the shops in question whereas the shops open on the road. The tenants, in their application filed under Section 12, had specifically referred

to the room which was being used on the top of shop Nos.517 and 518 which has a size of 12'x15'. In the counter-claim, filed by the landlord, specific averment was made that shop No.514 was lying vacant and that he wanted to start a business by including all the three shops from Nos.514 to 517. In paragraph 1(b) of his counter-claim, it was mentioned that he was an unemployed and had no work to do and he was not occupying any other shop. The eviction was also sought on the ground of rent having not been tendered from 01.04.2001. In reply, the factum of shop No.514 being in possession of the landlord was admitted and stress was laid on the room available on the first floor which was earlier occupied by the father of the landlord and was being used for running a computer centre and also as a tax consultant's office as he had retired as Sales Tax Officer. It was specifically averred that it was lying vacant for the last 4-5 years. No specific reply was given that the landlord was in occupation of any other shop in the urban area concerned which could be rebutted.

The averments in Ram Kishan Dass's case also are to the same effect wherein the tenant again admitted regarding the presence of a room in the first floor and the factum that there was some business of Kit Computer Centre being carried out on the first floor of the tenanted premises and that the stairs were opening to the main road of the first floor. No averment was made regarding any other building being occupied in the urban area. The area of shops has been noticed to be just 13'x7'. There is no doubt regarding the legal proposition that in order to seek eviction on the ground of personal *bona fide* requirement of the landlord, he has to aver that he is not in occupation of any other building or that he has not vacated any other building, without sufficient cause. The purpose is apparent that

the landlord has to come to the Court with clean hands and show that he does not have any other accommodation in his possession so that the tenant can object to his *bona fide* requirement by submitting that there is sufficient accommodation available with him.

The Full Bench in the case of **Banke Ram** (supra), succinctly traced out the requirement and need in the averments that the landlord must make specifically as per the ingredients contained in Section 13(b)(c) as they are an essential part of Sub-clause (a). However, it was held that the tenant is not to be taken by surprise and the Court is to give full consideration to the contentions raised by the respective parties. It has further been laid down that it could not be understood that in no circumstances the findings in pleadings the evidence regarding the ingredients envisaged under Sub-sections (b) & (c) cannot be looked into. In the present case, as noticed, the tenants were well aware as to what number of rooms and shops were in occupation of the landlord. There was no other material produced that there was any other shop apart from the shop or building in question which are in occupation of the landlord, the factum of which had been concealed from the Court or from the tenants.

The parties were, thus, well aware of what was the premises in occupation and therefore, the argument raised that there was any concealment on the part of the landlord is without any basis. No doubt an amendment application was filed before the Appellate Authority, benefit of which has now been sought by the tenant in Bal Kishan's case, to say that there was an admission itself. But, as has been discussed in detail, the factum of the other vacant shop No.514 was specifically mentioned. The size of the shop, which has got a mere frontage of 7 feet, which has been

noticed by the Rent Controller in its judgment dated 24.03.2008, would not be a shop as such which could be used for setting up a business of readymade garments and for the sale of the same if the landlord was wanting to amalgamate the three shops and open one showroom for sale of readymade garments. His *bona fide* necessity could not be doubted on this account because he was in possession of one of the shops which had been available to him for a long time. It has been noticed that he has been using the said shop in the meantime for parking his car, in Bal Kishan's case. Merely because he had another room which was vacant on the first floor would not be a ground for the tenant to submit that there is sufficient accommodation available with him. The evidence was there on record before the Courts below as to what was available to the landlord and it cannot be said that there was any concealment, as such, which would disentitle the landlord on this ground, as has been argued. It has been rightly pointed out that the tenant should not dictate the terms and conditions to the landlord as to which is the requisite premises for his personal necessity and how he has to run his business. Reference was rightly made to the judgment of the Apex Court in Sarla Ahuja (supra).

Relevant observations read as under:

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by

courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

Similarly, reference can be made to Atma S.Berar Vs. Mukhtiar Singh (2003) 2 SCC 3 and Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, 1999 (6) SCC 222. In the later case, the Apex Court examined the concept of bona fide requirement of the landlord and held that the Courts do not thrust their own wisdom on the choice of the landlord. The requirement of the landlord who was a doctor was for his son who was a practising doctor. The Apex Court held that the stance of the tenant that the family should shift to another house owned by them 7-8 kilometers away was not justified and neither could the law compel the landlord to shift to a different house in a different locality so as to permit the tenant to live in the tenanted premises. If the landlord wished to live in the comfort of his own house, he could not be required to squeeze himself and protect the tenant's occupancy. Relevant observation reads as under:

“21. Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practising doctor), his son (again a practising doctor), the daughter-in-law and two grand children who are gradually growing in their age. Looking at the size of the family, availability of three bed rooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency - not to talk of comfort and convenience. There is nothing unreasonable in a family with two practising doctors as members thereof needing a room or two or a room with a veranda to be used as a

residential clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence a bona fide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist in spite of the two deaths. It is not the case of the tenant - appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to Sarvodaya Enclave house which is admittedly situated at a distance of about 7-8 kilometers from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned senior counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own,

the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy. In addition, we find that on the date of the initiation of the proceedings, Sarvodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of a tenant. On the death of the wife of the landlord if any one of the two wills (one which was in existence at the time of initiation of the proceedings or the one, which appears to have been subsequently executed by the landlords' wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly. Sarvodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi's case (Supra) is squarely attracted. In our opinion, the availability of Sarvodaya Enclave property is not of any relevance or germane to determining the need and the bonafides of the need of the landlord. We are not therefore inclined to attach any weight to the application for additional evidence filed by the landlord before the High Court though we agree with the learned counsel for the tenant - appellant that the High Court was not justified in taking into consideration the contents of the will without formally admitting the same in evidence and affording the parties opportunity of adducing evidence in proof and dis-proof thereof."

The room at the top, admittedly, cannot be taken to have the same access, feasibility and viability for running the showroom which was the requirement, in comparison to the three shops, consolidated on the same floor, which was the intention of the landlord. The rent authorities unnecessarily and without any basis doubted the *bona fide* requirement merely because one shop was lying vacant and was not utilized for the said

purpose. Initially the room on the first floor was being used for a computer centre would not disentitle the landlord for all times to come, if his requirement and need arises subsequently.

In similar situations, this Court in *Madhu Behal & another Vs. Rishi Kumar & others 2009 (2) CCC 110*, while noticing that even if adjacent property is lying vacant and the landlord wanted it for commercial exploitation, it could not be denied to him on the ground that the property had not been utilized. Relevant observations read as under:

“7. Even as regards the *bona fide* requirement of the landlord, the trial Court as well as Appellate Court have considered the issue from the factual perspective and have come to the conclusion that the statutory requirements had been established that there had been no other property available for running the business and they had allowed the adjacent property to remain vacant and without letting it out only in order to secure eviction of this premises to make a larger construction for starting the business. The conduct of the landlord in retaining the adjacent property vacant without letting it out to others for the sake of obtaining eviction of the mentioned property also for better commercial exploitation has been properly rendered by due consideration of relevant facts. The respective decisions of the Rent Controller and the Appellate Authority accord with law and facts and there is no ground to interfere in revision.”

This Court in repeated judgments, after taking into consideration the judgment of the Full Bench in *Banke Ram* (supra) and *Ajit Singh* (supra) has held that if the parties are aware of each other's case, then the specific averment would not be fatal, as such. Reference can be made to the judgment rendered in *Gurbaj Singh* (supra), *Sat Parkash Chaudhary* (supra) and *Raj Kumar Vs. Budha Mal 2011 (2) RCR (Rent) 60*.

Another aspect which has been rightly submitted by Mr.Mahajan

is that the conduct of the tenant is also to be taken into consideration keeping in mind that the ground of eviction in the counter-claim was also non-payment of rent. The rent was, at that point of time tendered on 18.08.2003 in Ram Kishan Dass's case and on 10.10.2003, in Bal Kishan Dhiman's case and the issues were decided in favour of the tenants. It is the grouse of the landlord that he has not been paid rent since 31.12.2010. Though the rent is a paltry sum of Rs.145/- per month but keeping in view the fact that the sole relationship of landlord-tenant is the basis of rent and the tenant has to occupy the premise on payment of rent and 4 years have passed since the rent has not been paid and the matter went upto the Apex Court in the meantime and back but no effort was made to pay the rent.

In CR No.1374 of 2008, while issuing notice of motion on 11.03.2008, this Court had specifically directed that there would be interim stay of dispossession provided the tenant would pay all the arrears of rent and continue to pay rent by the 7th of every month, failing which, the interim order would be deemed to have been vacated. Specific application has been filed by the landlord for mesne profits bearing CM No.17401-CII of 2013 and it has been averred that after 31.12.2003, no rent has been paid. The tenant, in his reply dated 22.01.2014, has admitted the said fact to the extent that he has paid rent upto 31.12.2012. However, he is ready to pay the arrears of rent, thereafter, along with interest as and when this Court may direct. Thus, it is apparent that from 01.01.2013 onwards, no rent has been paid.

In **Rakesh Wadhawan & others Vs. Jagdamba Industrial Corporation & others 2002 (1) RCR (Rent) 514 SC** the Apex Court has held that payment of regular rent is the consideration which is to be kept in mind. The relevant observation reads as under:

“While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

In the case of Corona Ltd. (supra), it has been held that order of ejectment can also be directed on non payment of rent. Relevant observation reads as under:

“51. The learned counsel for the respondent-landlord is also right in submitting that the appellant- tenant does not deserve equitable relief under Article 136 of the Constitution. The tenant has not paid 'rent'/'mesne profits' since more than ten years. Even after approaching this Court, it had made part payment pursuant to interim order made in April, 2005. But nothing was paid/deposited thereafter even though two years have passed. These facts have not been disputed by the appellant. We are, therefore, of the view that even on that ground, the appellant-tenant cannot ask for discretionary and equitable relief and we are not inclined to grant such relief.”

In Ram Kishan's case, on the ground of equity, interference in the orders of the Appellate Authority can be denied and ejectment is liable to be ordered on non-payment of rent during the pendency of the present litigation, despite specific directions by this Court on 11.03.2008.

Accordingly, keeping in view the cumulative discussion, this Court is of the opinion that the findings of the Appellate Authority in Ram Kishan Dass's case, in CR No.1374 of 2008, whereby it directed ejectment on the ground of *bona fide* requirement is well justified and the revision petition stands dismissed.

Similarly, in Bal Kishan's case, in CR No.5625 of 2008, this

Court is of the opinion that the findings recorded by the authorities below

were not justified and the authorities could not substitute their view by holding that it was mere wish of the landlord to get the shop vacated. Accordingly, the said reasonings, being not justified, the revision petition filed by the landlord is allowed and the decisions dated 24.03.2008 and 14.06.2008 are set aside and the ejectment application filed by the landlord on the ground of personal necessity is allowed.

However, since the tenants are running business in the premises in question, this Court is of the opinion that it would take sometime to find a new place for shifting their business. Accordingly, they are granted four months time to vacate the premises, from today, subject to deposit of all the arrears of rent along with interest. The said deposits be made by 15.02.2015.

With the abovesaid observations, the present revision petitions stand disposed of.

14.01.2015
sailesh

(G.S.Sandhawalia)
JUDGE